IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY THE 16TH MARCH 2007/25TH PHALGUNA 1929

Bail Appl..No. 399 of 2007()

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CRIME NO. 227/05 OF MARARIKULAM POLICE STATION

PETITIONER:

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SAJITH, S/O.SUDHAKARAN,
AGED 29 YEARS, NOCHIKKAT VEEDU,
PALLIPRAM, CHERAI, KOCHI, ERNAKULAM.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

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STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM (CRIME NO.227 OF 2005 OF
MARARIKULAM POLICE STATION, NOW INVESTIGATED BY
CRIME DETACHMENT DEPUTY SUPERINTENDENT OF POLICE,
ALAPPLUZHA.L)

BY ADDL.D.G.P. SRI. V.K. MOHANAN

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON 16/03/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Bail Application No. 399 of 2007

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Dated, this the 16th day of March 2007

ORDER

The petitioner who is the 6th accused in Crime No. 227 of 2005 of Mararikulam Police Station for offences punishable under Sections 120 B, 109, 115, 307 and 302 read with Sec. 34 I.P.C. seeks his enlargement on bail. The occurrence took place on 20-7-2005 in which accused Nos. 1 and 2 who are hired assassins allegedly engaged by A6 and A7 are said to have dashed a lorry against a Tata Safari Car in which deceased Ramesh and others were travelling and in that accident Ramesh and two others were killed. According to the prosecution, deceased Ramesh who was formerly an employee of accused Nos. 6 and 7 had dissociated from them and had started a rival business thrivingly to the envy of accused Nos. 6 and 7 who planned the "operation road accident".

2. There are altogether 13 accused persons in the case. Accused Nos. 1 to 5 and 7 to 10 were arrested during the latter

half of 2005. The petitioner surrendered before the investigating officer on 17-11-2006 and on production before the Magistrate, after interrogation by the police was remanded to judicial custody where he continues.

3. Opposing the application, Sri. V.K. Mohanan, the learned Addl. Director General of Prosecutions made the following submissions before me:-

The investigating agency after completing the investigation against accused Nos. 1 to 10 had filed the final charge-sheet on 25-10-2005. Thereafter all the 10 accused persons except A6 were committed to the court of Sessions for trial as per the proceedings of the J.F.C.M.-I, Alappuzha in C.P. 38/2005. Since the petitioner herein was absconding, the case against him was re-filed as C.P. 41/05. As the petitioner was evading his arrest even after the issue of non-bailable warrants of arrest, his case was transferred to the Long Pending Case Register as L.P. 78/05. Thereafter, consequent on the surrender of the petitioner before the police and production before the Magistrate on 17-11-2006, the case against him was re-filed as C.P. 88/06. In the

meanwhile the investigating agency had commenced further investigation for the alleged involvement of accused Nos. 11 to 13 who were arrayed as such by filing a supplemental report before the Magistrate on 23-11-2006. A supplemental charge-sheet was thereafter filed on 23-12-2006 which was, however, returned as defective. The right of statutory bail under Section 167 (2) Cr.P.C. is extinguished when the charge-sheet or final report has been filed. Merely because the said charge-sheet is returned for curing certain defects will not entitle the accused to be released on compulsive bail. (See Guna @ Gunasekharan v. The State - 1997 Crl. L.J. 626 (Madras) and Velinedipurnam v. STate - 1994 Crl.L.J. 2579 (Andhra Pradesh). Right to compulsive bail does not survive after the filing of chellan (State of M.P. v. Rustam - 1995 (3) SCC 221). The reasons stated by the Magistrate for returning the supplimentary final report as defective are not correct. When the original charge-sheet itself was filed on 25-10-2005 against the petitioner as well (although shown as absconding) within 90 days, the petitioner cannot claim the benefit of the proviso to Sec. 167 (2)

Cr.P.C. for the reason that the supplemental charge-sheet was not filed within 90 days of the detention of the petitioner.

4. I am afraid that I cannot agree with the above submissions. It is true that on 25-10-2005, the final report was filed against accused Nos. 1 to 10 in which the petitioner was shown as absconding. He was not apprehended by the investigating agency nor did he appear before the committal court in C.P. 38/05. In the said final report filed on 25-10-2005, it was clearly stated as follows:-

> "സംഭവത്തിന് ശേഷം ഒളിവിൽ പോയ ആറാംപ്രതിയെയും മറ്റും അറസ്റ്റ് ചെയ്യുന്ന മുറയ്ക്ക് ചോദ്യം ചെയ്യേണ്ടതുംകൂടുതൽ അന്വേഷണങ്ങൾ നടത്തി തെളിവ് ശേഖരിക്കേണ്ടതും കൂടുതൽ പ്രതികൾ ഉള്ള പക്ഷം അവരെയും അറസ്റ്റ്ചെയ്യേണ്ടതുമാണ് """

Thus, even according to the investigating agency, the investigation against the 6th accused was not complete as he could not be apprehended and as and when he was arrested the investigating agency wanted to interrogate him and conduct further investigation. There is no dispute that after the petitioner surrendered before the investigating officer on 17-11-2006 and was interrogated , he

was produced before the Magistrate along with a remand report dated 17-11-2006. In the said remand report it was stated as follows:-

> "പ്രതിയെ അറസ്റ്റ് ചെയ്ത് കുറ്റസമ്മതമൊഴി രേഖപ്പെടുത്തിയിട്ടുള്ളതും പ്രതി ഈ കേസിൽ ഉൾപ്പെട്ടിട്ടുണ്ടെന്നും സംഭവത്തിന് ശേഷം ചില പ്രതികൾക്കൊപ്പവും മറ്റു പല സ്ഥലങ്ങളിലുംഒളിവിൽതാമസിച്ചിട്ടുള്ളതായുംമറ്റും പറഞ്ഞിട്ടുള്ള താകുന്നു."
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> xxxx xxxx xxx
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> ഈ കേസിലേക്ക് പ്രതിയുടെ കുറ്റ സമ്മതമൊഴിയുടെയും മറ്റും അടിസ്ഥാനത്തിൽ കൂടുതൽ അന്വേഷണം നടത്തിതെളിവുസമർപ്പിക്കേണ്ടതുള്ളതിനാൽ പ്രതിയെ പോലീസ് കസ്റ്റഡിയിൽവാങ്ങി അന്വേഷണം നടത്തുന്നതിലേക്ക് അപേക്ഷയും സത്യവാങ്മൂലവും ബഹു: കോടതിമുൻപാകെ സമർപ്പിക്കുന്നുണ്ട്""

The above statement clearly shows that on interrogation of the petitioner more information had come to light about his complicity and police custody of the petitioner was being sought for the purpose of further investigation and for collection of evidence on the basis of the statement of the petitioner etc. In the face of the above statement by the investigating officer, it is idle for

the prosecution to contend that there was no further investigation conducted as against the petitioner and that the final report filed on 25-10-2005 pertained to the petitioner as well. As a matter of fact, consequent on the remand of the petitioner to judicial custody with effect from 17-11-2006 onwards his continued detention was insisted for the reason that further evidence was required to be collected.

5. When the earlier investigation conducted and the report filed were behind the back of the petitioner who had not been arrested, the period of 90 days under the proviso to Sec. 167 (2) Cr.P.C. had not started running. It is only from 17-11-2006 that the investigation involving the petitioner was conducted. It is true that a supplemental charge-sheet after the conclusion of further investigation was filed on 23-12-2006. But it was admittedly returned as defective and has not been re-presented so far. In the letter dated 9-2-2007 from the J.F.C.M.-I, Alappuzha addressed to the Registrar, High Court of Kerala, he has stated that as on 9-2-2007 the final report submitted was returned due to certain defects and it has not been re-presented after curing the defects.

This Bail Application was filed on 18-1-2007 on which date even according to the prosecution, the supplemental charge was not before court. Merely because a supplementary final report was filed and the same was returned as defective, it cannot be held that the final report was filed within the statutory period of 90 days. Admittedly, the supplementary final report has not been re-presented after curing the defects. If it does not suffer from the defects pointed out by the Magistrate, the investigating agency could have re-presented the supplementary final report stating that the defects noted are not really there. Alternatively, the investigating agency could have challenged the action of the Magistrate by approaching the superior forum. That also has not been done. Thus, as on the date of filing of this bail application, the petitioner had been in custody for more than 90 days without there being any final report filed against him. To be more precise, as on 15-2-2007, the petitioner completed 90 days.

6. The only provision under which a person can be detained in custody during the stage of investigation is Sec. 167

Cr.P.C. The petitioner has been in custody for more than 90 days and the further investigation (which is nothing but a continuation of the original investigation) which was commenced after the petitioner surrendered before the investigating officer on 17-11-2006 has not resulted in a supplementary final report so far. Hence, I am inclined to give the petitioner the benefit of the proviso to Sec. 167 (2) Cr.P.C. Even otherwise, I do not think that the continuance of the pre-trial incarceration of the petitioner is warranted. The apprehensions of the prosecution can be taken care of by imposing appropriate conditions. The petitioner is accordingly directed to be released on bail on his executing a bond for Rs. 50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like amount to the satisfaction of the J.F.C.M.-I, Alappuzha and subject to the following conditions:-

1. The petitioner shall report before the Investigating Officer between 9 a.m. and 11 a.m. on all Wednesdays until a supplementary final report is received on the file of the Magistrate.

2. The petitioner shall not enter the territorial limits of Mararikkulam Police Station until further orders.

3. The petitioner shall surrender his passport, if any, before the J.F.C.M.-I, Alappuzha and shall not travel beyond the limits of the State of Kerala without the prior permission of the committal Magistrate or the Sessions Court to which he is committed for trial.

4. The petitioner shall make himself available for interrogation as and when required by the police till the filing of the supplementary final report.

5. The petitioner shall not influence or intimidate the prosecution witnesses nor shall he attempt to tamper with the evidence for the prosecution.

6. The petitioner shall not commit any offence while on bail.

If the petitioner commits breach of any of the above conditions, the bail granted to him shall be liable to be cancelled.

This application is allowed as above.

V.RAMKUMAR, JUDGE.

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